

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-951917-D2
Issued to: Rafael TORRES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2065

Rafael TORRES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 11 November 1975, an Administrative Law Judge of the United States Coast Guard at New York, New York, revoked Appellant's seaman documents, upon finding him guilty of misconduct. The first specification found proved alleges that while serving as an oiler on board the United States SS BUCKEYE STATE under authority of the document above captioned, on or about 22 June 1973, Appellant, while in port at Kandla, India, had in his possession marijuana and hashish. The second specification found proved alleges that while serving as an oiler on board the United States SS EXPORT AGENT under authority of the document above captioned, on or about 11 April 1974, Appellant did assault and batter the Third Assistant Engineer.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of one witness and nine exhibits.

In defense, Appellant offered in evidence his own sworn testimony and three exhibits.

At the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and both specifications had been proved. He then served a written order on Appellant revoking all documents, issued to Appellant.

The entire decision and order was served on 15 November 1975.

FINDINGS OF FACT

AS TO THE FIRST SPECIFICATION

On 22 June 1973, Appellant was serving as an oiler on board

the United States SS BUCKEYE STATE and acting under authority of his document while the ship was in the port of Kandla, India.

As Appellant was returning from taking a shower he saw three Indian Customs Officers who asked to search his room. In the course of the search, one of the Customs Officers withdrew something wrapped in brown paper from Appellant's trousers pocket.

After completion of the search, Appellant and the Customs Officers gave the Master the substance found in Appellant's trousers, retaining a quantity to take ashore, and informed the Master that the substance was marijuana and hashish. The Master made the same identification, based on his long experience as a ship's officer and his earlier training at an enforcement and narcotics school. Appellant also stated that the substance was marijuana and hashish, and that he had brought the substances aboard ship. Appellant was logged for possession of narcotics on that date.

In order to avoid being jailed, Appellant agreed to assist the Indian officials in apprehending a drug peddler. This was accomplished by Appellant's bringing the peddler aboard ship according to a pre-arranged plan.

The following day, the Customs Officer reboarded the ship and collected a fine from Appellant, the receipt for which was later received through the ship's agent in Madras, India.

At this time, the Master was informed that since his vessel was proceeding to another Indian port, it would be illegal for any of the narcotics to remain aboard. The officer repossessed the drugs retained by the Master.

AS TO THE SECOND SPECIFICATION

While Appellant was standing watch on 11 April 1974 in the engine room, he was approached by the engineer on watch, who asked him if he had checked the oil in the generator sump. When Appellant said he had, the Engineer contradicted him, saying that Appellant had not done so on the last few watches.

As the Engineer started to turn away, appellant pushed the palm of his hand into the engineer's face. The Engineer was knocked off balance and fell back against the Maneuvering Platform Telegraph. After regaining his balance, he called the First Assistant Engineer who came below and relieved the watch engineer, sending him to the purser for treatment of his eye.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the order of the Judge, concerning narcotics possession, is not supported by substantial evidence. With respect to the assault and battery it is urged that the Judge failed to properly assess the credibility of the witnesses.

APPEARANCE: Bernard Rolnick, Esq., of New York, New York

OPINION

I

In support of his contention concerning substantial evidence, Appellant argues, first that the Master had no personal knowledge of any substance being found in Appellant's trousers pocket. This argument is not well taken. Information received from the Customs Officers and Appellant's admission provided the Master with sufficient data upon which to base his conclusion. Lack of personal knowledge, especially with respect to log entries, affects only the weight of that evidence, and the Administrative Law Judge, as trier of fact, is the proper person to weigh the evidence. (See Appeal Decision 346 (McKINSEY)). In this case, the Judge found the weight of evidence to support the discovery of the narcotics in Appellant's trousers pocket.

Appellant's second argument concerning narcotics is that the statement in the log book as to Appellant's admission is "unconfirmed," and that Appellant denied that admission. There is no requirement that log book entries be confirmed or corroborated. So long as those entries are made in substantial compliance with the requirements of 46 U.S.C. §702, as these entries were, they are admissible as prima facie evidence of the facts therein recited. (36 CFR §5.20-107) Appellant's rebuttal is a matter to be weighed by the trier of facts, and here the Judge properly assigned greater weight to the log entries than to Appellant's bare denial.

Appellant next argues that his admission was not corroborated by another officer or crew member. Admissions are different from confessions. Any admission is subject to explanation and contradiction, and is subject to tests of credibility and to weight analysis by the trier of fact. (Appeal Decision 446 (CRUZ)). Although corroboration of admissions is often necessary in criminal trials, these administrative hearings are remedial in nature, and do not require corroboration. (Appeal Decision 1508 (WILLIS)).

Appellant argues that neither the Master nor the Customs Officers qualified as experts in identifying the substance as

marijuana and hashish. There is no requirement that identification of a substance as a narcotic be accomplished by expert testimony. That identification need only be accomplished by sufficient evidence. (Appeal Decisions 1189 (ROBERTS) AND 1165 (REDMAN)). It should be noted that expert identification of narcotic substances is not always required even in federal criminal prosecutions for narcotic possession, in which cases the evidentiary burden is greater than the burden in these types of hearings. (See United States v. Quesada, 512 F.2d 1043 (5th Cir. 1975); United States v. Gregorio, 497 F.2d 1253 (4th Cir. 1974); United States v. Aqueci, 310 F.2d 817 (2nd Cir. 1962). In the present case, identification was made by experience Customs Officers who have regular contact with marijuana and hashish and by the Master who also had previous contact with those substances as well as having received some training in identification. These facts, coupled with Appellant's admission, establish sufficient evidence to identify the substance involved as marijuana and hashish.

Appellant further argues that there is no showing that the substance found in Appellant's trousers was the same substance examined ashore for identification. Although ordinarily a chain of control is necessary to establish that a substance identified as a narcotic at a later time and place is the same as the substance confiscated, in this case that need is not present. Appellant's admission, plus identification of the substance by the Master and the Customs Officers prior to removal of a sample from the vessel precluded any necessity of establishing the concurrence of identity.

Appellant argues that the Master's testimony on deposition that Appellant admitted bringing the narcotics aboard the vessel and identifying them as marijuana and hashish is not corroborated by log entries. Although a log entry would have strengthened the Master's testimony, the absence of any entry does not destroy that testimony. That testimony was simply evidence to be weighed by the Judge as any other evidence. In the present case, the Judge believed the Master's testimony, and there is no compelling reason for overturning that finding.

Appellant urges that the Master could easily have retained a sample of the substance to bring to the United States for inspection and examination. Besides the fact that this action was unnecessary for the purposes suggested, it was established that Indian law precluded the possibility of retaining any part of the narcotics aboard the vessel.

Appellant urges consideration on appeal of other factors, all of which, if even considered by the Judge, involved simply weighing of evidence by the trier of fact. There is no clear showing of

error with respect to any of the Judge's findings, and those findings are hereby affirmed.

II

With respect to the assault and battery specification, Appellant contends that there is a serious question of credibility, and, apparently but not specifically stated, the weight should have been in favor of Appellant. It is axiomatic that where conflict of testimony is involved, the credibility of witnesses is determined by the trier of facts. Where the testimony of one witness has been found to be the more credible, that finding will not be overturned absent a showing that the testimony relied on was inherently incredible. There is no such showing in this case, and so the finding is affirmed.

CONCLUSION

In light of the foregoing I find that there is sufficient evidence of a reliable and probative nature to support both specifications and the charge of misconduct on the part of Appellant.

ORDER

The order of the Administrative Law Judge dated at New York, New York, on 11 November 1975, is AFFIRMED.

O. W. SILER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 14th day of July 1976.

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